

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED

NOV 23 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Policy and Rules Concerning the)
Interstate, Interexchange Marketplace)

CC Docket No. 96-61

Implementation of Section 254(g) of the)
Communications Act of 1934, as amended)

1998 Biennial Regulatory Review --)
Review of Customer Premises Equipment)
and Enhanced Services Unbundling Rules)
in the Interexchange, Exchange Access)
and Local Exchange Markets)

CC Docket No. 98-183

COMMENTS OF AMERITECH

Michael S. Pabian
Counsel for Ameritech
Room 4H82
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025

Economic Specialist:
Francis X. Pampush

Dated: November 23, 1998

No. of Copies rec'd _____
List A B C D E

049

TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY.....	1
II.	ALL WIRELINE CARRIERS SHOULD BE ABLE TO BUNDLE CPE WITH TELECOMMUNICATIONS SERVICES AS LONG AS THOSE SERVICES REMAIN SUBJECT TO APPLICABLE NONDISCRIMINATION REQUIREMENTS.....	3
	A. The Structure of the CPE Market Has Changed Dramatically Since CPE Bundling Prohibition Was Adopted.	6
	B. No Carrier Has the Ability to Dominate the CPE Market.	8
	C. ILECs Are No More Able to Dominate the CPE Market Than Are IXC's.	10
	D. Elimination of the CPE Bundling Prohibition Will Benefit Consumers and the Industry.	15
III.	THE COMMISSION SHOULD CLARIFY THAT ITS INFORMATION SERVICES UNBUNDLING RULE DOES NOT PROHIBIT THE OFFERING OF INFORMATION SERVICES IN A MANNER SIMILAR TO THAT PERMITTED FOR CPE.	18
IV.	CONCLUSION.....	20

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Policy and Rules Concerning the)	CC Docket No. 96-61
Interstate, Interexchange Marketplace)	
)	
Implementation of Section 254(g) of the)	
Communications Act of 1934, as amended)	
)	
1998 Biennial Regulatory Review --)	CC Docket No. 98-183
Review of Customer Premises Equipment)	
and Enhanced Services Unbundling Rules)	
in the Interexchange, Exchange Access)	
and Local Exchange Markets)	

COMMENTS OF AMERITECH

I. INTRODUCTION AND SUMMARY.

Ameritech¹ submits these comments in response to the Commission's Further Notice of Proposed Rulemaking in the above-captioned docket.² The FNPRM revisits an issue the Commission deferred in its Second Report and Order in the Interexchange Marketplace docket³ -

¹ Ameritech means: Ameritech Illinois, Ameritech Indiana, Ameritech Michigan, Ameritech Ohio, and Ameritech Wisconsin.

² *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as Amended, 1998 Biennial Regulatory Review -- Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets*, CC Docket Nos. 96-61, 98-183, Further Notice of Proposed Rulemaking, FCC 98-258 (released October 9, 1998) ("FNPRM").

³ *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace and Implementation of Section 254(g) of the Communications Act of 1934, as Amended*, CC Docket No. 96-61, Second Report and Order, FCC 96-424 (released October 31, 1996) 11 FCC Rcd. 20730 at ¶118.

- *i.e.*, whether prohibition against bundling customer premises equipment (“CPE”) with common carrier communications services should be eliminated for nondominant interexchange carriers (“IXCs”). The Commission also seeks comment on a closely related issue -- *i.e.*, whether the CPE bundling restriction should be eliminated for incumbent local exchange carriers (“ILECs”) as well. In addition, the Commission solicits comment on whether its *Computer Inquiry II* (“CI-II”) enhanced/information services⁴ unbundling requirement should be eliminated either for nondominant interexchange carriers or for all carriers.

In these comments, Ameritech demonstrates that the CPE bundling prohibition should be eliminated for all carriers, subject only to the requirement that wireline common carrier services continue to be subject to applicable nondiscrimination requirements. There is no reason to treat ILECs differently from IXCs in that regard. The Telecommunications Act of 1996 (the “Act”) has radically altered the competitive landscape for local services. In any event, despite any alleged differences in relevant market power, ILECs have no more ability to dominate the CPE market than do IXCs. The CPE market has changed dramatically since the CPE bundling prohibition was finalized almost two decades ago. That, coupled with any common carrier service nondiscrimination requirements otherwise applicable to all carriers, will ensure that no carrier has the ability to exert any anticompetitive leverage in the CPE market. Moreover, permitting the bundling of CPE will benefit customers and carriers alike by making more options available to customers and by allowing carriers to create packages that help customers overcome the hurdle that high-cost CPE could pose to the purchase of new advanced services.

⁴ The Commission has determined that the terms “enhanced services” and “information services” should be interpreted as referring to the same functions. FNPRM at fn. 2.

Consistent with this model for CPE unbundling, Ameritech believes there is no reason for the Commission abandon its information services unbundling requirement for wireline carriers -- which requires that carriers that own basic transmission facilities and offer information services provide the transmission services used in those offerings to others on a nondiscriminatory basis. The Commission should simply clarify that information services may be offered in connection with wireline common carrier services to the same extent that CPE can -- *i.e.*, as long as the common carrier communications services remain subject to applicable nondiscrimination requirements.

II. ALL WIRELINE CARRIERS SHOULD BE ABLE TO BUNDLE CPE WITH TELECOMMUNICATIONS SERVICES AS LONG AS THOSE SERVICES REMAIN SUBJECT TO APPLICABLE NONDISCRIMINATION REQUIREMENTS.

In the FNPRM, the Commission took care to explain the breadth of its current CPE bundling prohibition:

Our current restrictions not only prevent carriers from offering distinct goods and/or services only on a bundled basis, but also prohibit carriers from offering "packaged discounts," which enable "customers [to] purchase an array of products in a package at a lower price than the individual products could be purchased separately." (Citations omitted.)⁵

Thus, the CPE bundling prohibition precludes a wireline carrier from offering a common carrier service only in connection with CPE -- this restriction still has merit and should be continued, subject to applicable nondiscrimination requirements. However, the Commission's rule also prohibits the carrier from offering CPE on terms that are only available in connection with a

⁵ FNPRM at ¶1.

customer's purchase of a common carrier communications service -- this restriction is unnecessary, harms consumers, and, therefore, should be eliminated.

In addressing the wireline CPE bundling prohibition, the Commission should follow its past precedent. In its Cellular Unbundling Order,⁶ the Commission partially eliminated the CPE bundling prohibition with respect to cellular service. It continued the prohibition on the former type of CPE bundling mentioned above, but permitted the latter -- the offering of CPE on terms available only in connection with the purchase of a common carrier service. This modification of rule was justified because the Commission continued the requirement that cellular carriers also make their cellular services available separately from CPE on a nondiscriminatory basis.⁷ The results of this permissible bundling have been spectacularly successful in benefiting both customers and the cellular industry itself. Demand for cellular services has exploded without any adverse effect on the cellular CPE industry. Vast numbers of customers now have the benefits of mobile communications capability and the increased demand has permitted cellular providers to invest in expanding and upgrading their facilities.

The decision constitutes a model for how the CPE restriction can and should be eliminated for all carriers. The analysis conducted by the Commission in the cellular case applies virtually without modification to the case of wireline carriers as well. Various aspects of that analysis will be discussed below.

⁶ *In the Matter of Bundling of Cellular Customer Equipment and Cellular Service*, CC Docket No. 91-34, Report and Order, FCC 92-207 (released June 10, 1992) ("Cellular Unbundling Order") 7 FCC Rcd. 4028.

⁷ *Id.* at ¶30.

The condition -- continued adherence to applicable nondiscrimination requirements -- imposed by the Commission in the cellular case is appropriate for application to all wireline carriers. That condition satisfied the Commission's goal of implementing cellular CPE bundling in a manner consistent with the just and reasonable provisions of §201(b) and the nondiscrimination provisions of §202(a) of the Communications Act. To satisfy that objective, the Commission simply required that cellular carriers make their cellular services available separately from CPE on a nondiscriminatory basis.

Similarly, the Commission should permit all wireline carriers to bundle CPE with common carrier telecommunications services, subject to applicable nondiscrimination requirements. For interstate services, this would mean, as in the case of cellular services, that the services would have to be available to any party on the same basis and at the same price as they are available to those customers who also choose to obtain CPE from the carrier. In addition, the Commission should continue its open interface and nondiscriminatory interconnection requirements for wireline carriers. Specifically, the Commission should retain its "all carrier rule" which applies to all carriers owning basic transmission facilities and requires:

that all information relating to network design be released to all interested parties on the same terms and conditions, insofar as such information affects either intercarrier interconnection or the manner in which interconnected CPE operates.⁸

Requiring open interfaces will preclude wireline carriers from developing "proprietary" services that operate only with "proprietary" CPE. Such activity could create a real risk of that certain

⁸ *In the Matter of Second Computer Inquiry*, Docket No. 20828, Memorandum Opinion and Order, FCC 80-268 (released December 30, 1980) 84 FCC 2d 50 at ¶95.

carriers with substantial vertical integration and massive market presence⁹ would monopolize at least a segment of the CPE market as well as create a danger of “balkanization” of networks. With this limitation, the Commission’s questions concerning Part 68 of its rules, including the demarcation point,¹⁰ are easily answered. All that remains unchanged.

For intrastate services, except for the above open interface (all carrier rule) and nondiscriminatory interconnection requirements, the Commission should defer to state laws and regulations as to whether any other nondiscrimination requirements should apply. For example, if intrastate services become sufficiently competitive that a state commission or legislature decides to eliminate or significantly modify historical common carrier nondiscriminatory rate requirements, there is no reason why the Commission should insist on maintaining one nevertheless as a condition of CPE unbundling. Otherwise, the CPE unbundling rule would unnecessarily interfere with potential state modification of requirements for common carrier services.

A. The Structure of the CPE Market Has Changed Dramatically Since CPE Bundling Prohibition Was Adopted.

It is important to note how much the CPE market has changed since the Commission’s CPE bundling prohibition became final in 1980. At that time, most customers and virtually all consumer and small business customers knew only one source for their CPE -- their local exchange carrier -- and Western Electric was the sole manufacturer. For customers, the term “CPE” meant nothing since equipment had always been treated as part of telephone service. In

⁹ See discussions of AT&T’s market dominance, *infra*.

¹⁰ FNPRM at ¶19.

that context, in order to promote competition in the CPE market, both in the retail source and in manufacturing, and in order to prevent customers from being harmed by higher rates for regulated service that might result from cross-subsidization of CPE, the unbundling rule made sense.

However, just five years after the CPE bundling rule became effective, the benefits of CPE competition were indisputable. As noted by various members of the Commission in 1986 law review article, even at that time the market for CPE was “vigorously competitive”:

The benefits of such competition are palpable. It is estimated that sales revenues in the CPE market increased by nearly 50% between 1983 and 1985. More than 2000 vendors are supplying end users with \$14 billion worth of terminal equipment. The introduction of competition has also provided consumers with a wider variety of CPE options and with less expensive alternatives than existed in the earlier monopoly market. Consumers can obtain such new CPE features as automatic redial, hold, and other call-handling options. A wide variety of new terminal equipment has also appeared, including wireless telephony, customized dialing, and other specialty phones, as well as varieties of decorator phones.¹¹

Likewise, in 1998, it is also beyond dispute that the CPE market continues to be vigorously competitive. Today, the shape of the CPE market is completely inverted from what it was almost two decades ago. There are numerous manufacturers and the vast majority of customers look to sources other than wireline carriers for their CPE.¹² A hint of the abundance of those sources can be obtained by simply looking at store ads in any Sunday newspaper. In other words, customer expectation and the plethora of alternative CPE sources would make it

¹¹ Mark S. Fowler, Albert Halprin, and James D. Schlichting, “‘Back to the Future’: A Model for Telecommunications”, 38 Federal Communications Law Journal 145 (1986).

¹² For example, less than 2% of Ameritech’s residence customers have obtained their telephone sets from Ameritech. Interestingly enough, the figure is much higher for AT&T -- nearly 25%.

virtually impossible that any carrier -- IXC or ILEC -- could exploit, much less achieve, a monopoly position in the provision of CPE.

B. No Carrier Has the Ability to Dominate the CPE Market.

In the FNPRM, the Commission focused too narrowly on the degree of competition in the telecommunications service market. The Commission's tentative conclusion in the FNPRM to completely eliminate the CPE unbundling requirement for nondominant providers of interstate interexchange services appears to be based on its findings that the CPE market is competitive and that the interstate domestic interexchange market is "substantially competitive."¹³ In the Cellular Unbundling Order, on the other hand, while the Commission did find that the cellular CPE market was "extremely competitive," the Commission specifically refused to find that the cellular service market was fully competitive.¹⁴ Nonetheless, the Commission, in making its decision looked at the appropriate issue -- the likelihood that any cellular carrier engaged in bundling would be able to restrict competition in the cellular CPE market. The Commission found that it could not. The Commission should apply the same analysis in this case. If it does, it will reach the same conclusion -- for all carriers.

In its Cellular Unbundling Order, the Commission found that, because cellular service remained available on an unbundled nondiscriminatory basis, cellular carriers do not have the potential to successfully engage in predatory pricing practices. Even if a carrier did obtain a temporary "corner" on the CPE market and began to charge high prices for the bundle, customers could still obtain affordable CPE from other sources and cellular service, without

¹³ FNPRM at ¶12.

¹⁴ Cellular Unbundling Order at ¶11.

CPE, from the carrier.¹⁵ The same is true for any wireline carrier. The current existence of an abundance of sources of CPE,¹⁶ coupled with the requirement that a carrier must offer its telecommunications services consistent with any applicable nondiscriminatory requirements, makes it highly unlikely that any predatory pricing scheme would be successful or that any carrier could otherwise dominate the CPE market.

¹⁵ *Id.* at ¶14.

¹⁶ *See* subsection A, *supra*.

C. ILECs Are No More Able to Dominate the CPE Market Than Are IXCs.

As noted above, the Commission has tentatively concluded that, because the interexchange market is substantially competitive, IXCs should obtain CPE unbundling relief because it is unlikely that they could engage in anticompetitive conduct in bundling CPE and interstate domestic interexchange services. However, again as noted above, in the Cellular Unbundling Order the Commission focused on the real issue -- whether the carrier could likely restrict competition in the CPE market.

For ILECs, the Act has brought about substantial changes in the competitive structure of the local services market. The market is open. ILECs must not only “get out of the way” of competitive entry; they must nurture it by making available unbundled network elements and resale at discounted rates -- as well as fulfilling the other obligations of §251 of the Act. As a result, local competition is growing. That fact alone would substantially diminish any alleged ability of ILECs to “leverage” their position in the local market to dominate the world of CPE.

Nonetheless, regardless of any alleged “monopoly” power in the local exchange market, for all the reasons discussed in the prior section, ILECs are simply not in a position to exploit -- much less attain -- dominance in the CPE market.

ILECs would not be able to restrict consumers’ choice of CPE. If all wireline common carrier services remain subject to any nondiscrimination requirements applicable in the jurisdiction of the particular service, bundles will never represent an inappropriate contraction of the choice set (and in most cases will represent only an expansion of choice and consumer welfare).

Nor could ILECs successfully engage in leveraging -- which occurs when a company attempts to raise the price of the CPE and thereby generate profits that regulation otherwise prevents the company from generating in its core services market. As the Commission notes, competition in both the services and CPE markets certainly can help prevent a harm such as leveraging,¹⁷ but such competition is not the only preventative. Regardless of the competitiveness of the services market, a carrier that attempts to leverage market power from the services market into the CPE market by raising CPE (or bundled CPE) prices will find its attempts unsuccessful provided that (1) common carrier services remain subject to the nondiscrimination requirements applicable in the jurisdiction of that particular service; and (2) open interfaces remain in the form of the Commission's "all carrier" rule. With the nondiscrimination and open interface rules in place, no carrier will be able to raise the price of CPE far above the unbundled market rate because customers will simply buy their CPE from a Wal-Mart, Radio Shack, Sears or other retailer and plug it into the (common) interface and then obtain service from the carrier.¹⁸

Again, neither could an ILEC successfully engage in predatory pricing in the CPE market. According to this theory, the carrier would price the bundle below the sum-of-the-parts thereby disadvantaging other sellers of CPE -- even driving them out of business -- after which time the carrier would raise CPE price to high levels to recoup profits. In today's telecommunications market, such a strategy will not be successful. First, manufacturers and

¹⁷ FNPRM at ¶3.

¹⁸ This does not mean that the price of bundles should never exceed the sum-of-the-parts prices because a bundle itself may have value (i.e. reduced transactions costs for the consumer in the form of less hassle factor) that is worth paying for. See, for example, Sowell, T., "Bundled Up," *Forbes*, September 21, 1998.

retailers of CPE are every bit as big (if not bigger) than many carriers. For example, Lucent has a market capitalization (i.e. total market value of its shares of equity) of \$113 billion; Wal-Mart's market capitalization is \$166 billion. In contrast, Ameritech's market capitalization is only \$63 billion. Moreover, as noted above, Ameritech has a miniscule market share in the CPE market. The math for predation just does not work. No ILEC would even contemplate a predatory pricing strategy because it could be sure that predation would not work in today's marketplace.

Nor could ILECs "skew" the development of CPE.¹⁹ This argument says that by bundling a new service with a new kind of CPE, the carrier could actually wind up picking winners and losers from among the competitors of a nascent technology, especially in a way that is most advantageous to the carrier's core business. Having the common carrier service available with nondiscrimination requirements applicable in the jurisdiction of that particular service and maintaining open, published interfaces helps ensure that different types of CPE are accommodated and that consumers are not disadvantaged. Again, this openness also aids the network-of-networks concept and prevents the balkanization of networks.

Thus, there is no realistic likelihood that any of those harms will occur at the hands of any carrier -- not even an ILEC. Abundant and irreversibly vibrant competition in the CPE market, open interface requirements, and continued adherence to any applicable nondiscrimination requirements applicable to all carriers with respect to common carrier services ensure that result.

¹⁹ FNPRM at ¶2.

The circumstances that gave rise to the need for the bundling prohibition in the first place have all evaporated. There is not even any realistic danger of cross-subsidization. For large local exchange carriers, Part 64 allocation rules will assure that no cross-subsidization takes place.²⁰ But even those rules are not necessary for ILECs who are subject to price cap regulation without any "sharing" or residual earnings regulation; for them, there is no ability to shift costs since they cannot raise regulated rates.²¹

Moreover, any notion that ILECs have a greater degree of leverageable market power than do IXC's in their respective market must be seriously re-evaluated -- especially in light of recent IXC vertical integration activities. For example, it should be clear that AT&T's potential to dominate the CPE market is much greater than any ILEC's. AT&T's presence is national (in fact, international) in scope. In addition, its recent mergers have effectively combined the country's No. 1 long distance provider and No. 1 international service provider (AT&T) with the #1 cellular service provider (McCaw), the No. 1 CLEC (Teleport), and the No. 1 cable service provider (TCI). In this configuration, AT&T is capable of bringing substantial force to bear in the marketplace. Its position as a highly integrated complete one-stop-shop enables it to be in a position to wield significant influence over customer decision-making. In addition, without a stringently enforced open interface requirement, AT&T would have a significant ability leverage

²⁰ Since, in most cases, the common carrier service would have to be offered separately at a nondiscriminatory price, revenue allocation -- both for Part 64 and for universal service contribution purposes (FNPRM at ¶18) -- would be a relatively simply matter.

²¹ In addition, Ameritech is under "incentive" regulation in all five of its state jurisdictions -- again meaning that there is no ability to shift costs by raising rates for regulated services.

its position inappropriately in connection with proprietary technical service/CPE offerings.

MCI's recent acquisitions, while not as extreme, tend to put it in a similar position.

Compared to these international players, ILECs remain "children" in the world of "total service." Because of this, ILECs will, at least for the foreseeable future, continue to be regarded by customers as incomplete one-stop-shops at best. To that extent, customers will be ever-mindful that, especially for CPE, there will always be sources other than their ILEC.

That being said, Ameritech is not advocating the continuation of the CPE bundling prohibition for IXC's. Rather Ameritech merely points out that there is no reason to impose on ILECs any greater restrictions in that regard than are imposed on IXC's.

That is especially true since many IXC's are or will be engaged also in the provision of local exchange service. Any elimination of the prohibition against CPE bundling for those carriers will effectively give them the ability to offer CPE in a package that will include local exchange service as well. Permitting IXC's this ability while denying it to ILECs will allow IXC's to create customer expectations for the provision of local exchange service that ILECs will not be able to match. In other words, it would preclude ILECs from being able to compete on the same basis, ultimately to the detriment of the consumer. Permitting IXC's to bundle CPE while denying the same ability to ILECs will simply prohibit ILECs from being able to offer consumers a similar or even better package. As always, it is the consumer that will suffer because of a failure to permit full competition. No one would benefit in that case except, of course, the IXC's.

Therefore, because ILECs have no more ability to dominate the CPE market than do IXC's, the Commission should permit all wireline carriers to bundle CPE with their common

carrier communications offering provided, however, that those common carrier offerings remain subject to any nondiscrimination requirements applicable in the jurisdiction with which the services are associated.

D. Elimination of the CPE Bundling Prohibition Will Benefit Consumers and the Industry.

The benefits of permitting all wireline carriers to offer CPE in connection with the purchase of common carrier wireline services are the same those that the Commission discussed in its decision to permit the bundling of CPE with cellular services. In the Cellular Unbundling Order, the Commission found that permitting the bundling of CPE and cellular service would allow cellular carriers to offer customers a way to overcome the barrier of that high-priced CPE posed to subscribing cellular service in the first instance.²² In addition, the Commission found that, by stimulating demand for cellular service in this manner:

The bundling of cellular CPE and cellular service furthers the Commission's goal of universal availability and affordability of cellular service and thus promotes the continued growth of the cellular industry.²³

Permitting the bundling of CPE with the purchase of common carrier communications services can achieve similar benefits on the wireline side as well. Especially in the case of new advanced services in which new-technology CPE may be high-priced, bundling of discounted CPE in connection with the purchase of the service could simulate demand for the service -- especially by consumers and small businesses for whom the cost of the CPE may prove to be a burden. For example, Ameritech's ISDN-Direct service would provide consumers or small

²² Cellular Unbundling Order at ¶19.

²³ *Id.* at ¶20.

businesses with a total of 144 Kbps of capacity that could be used for higher speed access to the Internet. Compatible ISDN terminal equipment costs between \$200 - \$450 depending on the voice/data configuration intended by the customer. By offering the CPE at a discount to customers who purchase ISDN service, wireline carriers can help remove a barrier to customers' purchase of ISDN service and increase the deployment of this advanced capability.

Similarly, consistent with the mandate of §706 of the Act regarding the deployment of advanced telecommunications capability to all Americans, such bundling could prove to be useful as a vehicle for wireline carriers to stimulate demand for advanced services that utilize such capability. As noted above, the price of CPE compatible with new services may well hinder the purchase of those services. Bundling CPE can lower costs for customers, thus removing barriers to demand for advanced services and helping to make the deployment of the advanced capability more economically feasible. By stimulating demand, CPE bundling can help lower the cost of providing these services to each subscriber and enable carriers to achieve a return on their investment, thus stimulating continued investment and furthering the intent of §706. This is exactly what the Commission found to be the case for the cellular industry, even before §706 was drafted.²⁴

Moreover, permitting the bundling of CPE would have benefits with respect to plain old telephone service ("POTS") as well. The permitted bundling of CPE with common carrier communications services (where the communications services would still be subject to nondiscrimination rules of the appropriate jurisdiction) effectively permits CPE to be used as an inducement to the purchase of the common carrier service. To the extent that the demand for

²⁴ *Id.*; see also, Cellular Unbundling NPRM, 6 FCC Rcd. 1732 at ¶17.

POTS increases, society benefits since the communications capability of its members will also increase. Thus, the Commission should not limit CPE bundling only to advanced services.

In addition, as the Commission found with the cellular service,²⁵ bundling of CPE and wireline service and CPE discounting practices can benefit consumers by offering them an expanded choice of goods and services at reduced cost. This, in turn, would encourage other providers to respond by developing other innovative marketing practices as well stimulating further competition in the wireline industry -- ultimately to the benefit of consumers.

Also, bundling can benefit the CPE industry itself as a tool for risk-shifting up the production chain. The service provider that offers a CPE/service bundle can turn around and commit to the manufacturer quantity purchases of CPE with the anticipation of selling the equipment bundled with its service. The service provider is likely to have a good idea of the quantity of service that it expects to sell and thus bundling becomes a mechanism for informing the manufacturer. Such a commitment enables the manufacturer to smooth production runs for the existing generation of equipment and to speed up life cycles for new generations. Thus, even if the bundling simply results in a one-for-one displacement of a la carte sales, total uncertainty in the production system is reduced which lowers production costs. Absent the commitment by the service provider, these benefits would not be available. The bundle (where the price of the jointly provided product is less than the sum of individual prices) helps ensure that the service provider is not stuck with an unwanted inventory of CPE, and in so doing directly benefits the customer. Thus, bundling, as defined here, where the price of the CPE/service bundle is less than the combined prices of the CPE and service purchased separately ultimately represents a

²⁵ Cellular NPRM at ¶16.

sharing with consumers of the benefits and an increase in the pace of innovation.

III. THE COMMISSION SHOULD CLARIFY THAT ITS INFORMATION SERVICES UNBUNDLING RULE DOES NOT PROHIBIT THE OFFERING OF INFORMATION SERVICES IN A MANNER SIMILAR TO THAT PERMITTED FOR CPE.

The Commission's current rule requiring the unbundling of basic and information services is somewhat different and more limited than its prohibition against the bundling of CPE and basic common carrier services. The rule requires all carriers that own common carrier transmission facilities and offer information services to provide the transmission services utilized by their own information services operations to others on a nondiscriminatory basis.²⁶

As part of its proposal with respect to wireline CPE bundling, Ameritech has advocated retention of any underlying nondiscrimination obligations applicable to common carrier communications services. Consistent with that recommendation, Ameritech does not here advocate that the Commission eliminate the information services bundling prohibition for any wireline carrier.

It is curious that AT&T, with its extensive vertical integration and market presence would propose an elimination of the requirement to make underlying transmission capabilities utilized by its information services operations also available to others on a nondiscriminatory basis. AT&T is perhaps the one carrier that could effectively abuse the elimination of that requirement to leverage its position in telecommunications services inappropriately into the information services marketplace.

²⁶ *In the Matter of Second Computer Inquiry*, Docket No. 20828, Final Decision, FCC 80-189 (released May 2, 1980) 7 FCC 2d. 384 at ¶231.

As Ameritech has pointed out,²⁷ AT&T's merger with TCI would give it a controlling interest in @Home, a leading provider of cable-based Internet access service. In fact, America Online ("AOL") reports that MSOs serving half of all U.S. and Canadian households have agreed to make @Home their exclusive Internet service offering.²⁸ Without a nondiscrimination obligation on the wireline side, AT&T could use its significant market presence unfairly to increase @Home's market share. For that reason, Ameritech is not recommending that the Commission eliminate its prohibition against bundling information services and wireline basic services as currently articulated.

However, to avoid confusion, the Commission should clarify that the rule does not prohibit the bundling of information services with common carrier communications services in the same manner that CPE can be bundled. In other words, as is the case with CPE, there is no reason why any wireline carrier should be prohibited from offering information services in connection with a customer's purchase of a common carrier communications service as long as the common carrier service remains subject to any applicable nondiscrimination requirements. The offering of, for example, discounted Internet access service in connection with the purchase of an ISDN line could, like CPE bundling, simulate demand for network services. Given the current proliferation of information service providers -- especially Internet service providers -- it is unlikely that any carrier could be in a position to inappropriately leverage dominance into that

²⁷ See Ameritech's Comments and Reply Comments filed in CC Docket No. 98-178 regarding the proposed AT&T/TCI merger.

²⁸ See its comments filed in CC Docket No. 98-178, at 9.

market -- provided, however, that the associated common carrier services remain subject to any applicable nondiscrimination requirements.

IV. CONCLUSION.

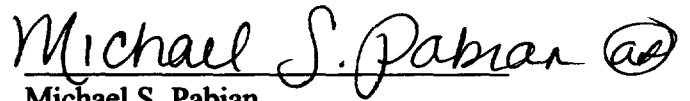
The way in which the Commission permitted the bundling of cellular CPE and cellular service provides a good model for how the prohibition against CPE bundling should be eliminated for all wireline carriers. Therefore, all wireline carriers should be permitted to bundle CPE with common carrier offerings as long as those common carrier services remain subject to any nondiscrimination requirements applicable in the relevant jurisdiction. For interstate services, this would mean that services must be available on nondiscriminatory terms and conditions to any customer that obtained CPE from another source.

Consistent with this recommendation, there is no reason for the Commission to eliminate its information services unbundling requirement for any wireline carrier. That requirement demands that carriers offering information services that utilize common carrier transmission

services, make those common carrier services available to others on nondiscriminatory basis.

Rather, Ameritech asks only that the Commission clarify that this unbundling requirement does not prohibit carriers from offering information services on a bundled basis with common carrier services as long as those common carrier services remain subject to any applicable nondiscrimination requirements.

Respectfully submitted,

A handwritten signature in cursive script that reads "Michael S. Pabian" followed by a circled "a" or "at" symbol.

Michael S. Pabian
Counsel for Ameritech
Room 4H82
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025
(847) 248-6044

Economic Specialist:
Francis X. Pampush

Dated: November 23, 1998

[MSP0183.doc]